IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUUS APPLICATION NO. 40 OF 2004

STATE
Through Public Prosecutor,
High Court of Bombay at Panaji,
Panaji. ... Applicant

versus

Santan Pascoal Coelho
S/o Dumingo Baptista Coelho,
r/o House No.61, Pirazon,
Moira, Bardez, Goa. ... Respondent

Mr. S. N. Sardessai, Public Prosecutor for the State.

Mr. N. N. Sardessai, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 11TH JUNE, 2004.

ORAL ORDER

The Public Prosecutor seeks leave of this Court to appeal against the Judgment/Order of the learned Judicial Magistrate, First Class, Mapusa, in Criminal Case No.170/2002/A acquitting the Accused(Respondent herein) for offences punishable under Sections 279, 304-A of I.P.C. and Sections 134(b) and 196 of the Motor Vehicles Act, 1988.

2. The case of the prosecution before the learned Judicial Magistrate, First Class was that on

22nd March, 2002, at about 07.50 hours, at Aldona bus stand, Mapusa, the said Accused drove his Bajaj scooter bearing No. GDN-1733 in a rash and/or negligent manner, while proceeding from Asilo Hospital, Mapusa, towards the Mapusa market and on reaching near the said Aldona bus stand, Mapusa, dashed the said scooter against a pedestrian lady by name Smt. Lilawati Shirodkar, aged about 55 years, as a result of which the said Smt. Shirodkar fell down on the road and sustained injuries to the head and to the chest which subsequently resulted into her death and the Accused thereafter did not stop his scooter and went away without shifting the said Smt. Shirodkar to the hospital nor did he intimate the Police about the said accident. It was also the case of the prosecution that the Accused was found without having valid Insurance Certificate for driving the said scooter.

3. On the other hand, it was the case of the Accused, that he was travelling on a scooter bearing No. GDK 4489 and that he had seen the said woman coming from the market side, that is, from the left hand side of the road and at that time he was behind the maruti van. The Accused further stated that the said woman came running and dashed the maruti van and fell down in front of it and she was taken to the hospital in the same van.

4. The prosecution examined in support of their case 10 witnesses while the Accused examined in support of his defence 2 witnesses. The case of the prosecution rests particularly on the evidence of P.W.5, Datta Guru Aroskar, P.W.7, Datta Govekar, the driver of the said maruti van and P.W.8, Uday B. Shetty.

5. In support of the application under consideration for leave to file the Appeal dated 7th February, 2004, Mr. S. N. Sardessai, learned Public Prosecutor on behalf of the Applicant has submitted that the findings recorded by the learned Judicial Magistrate, First Class in rejecting the evidence of P.W.5, Datta Guru Aroskar, P.W.7, Datta Govekar and P.W.8, Uday B. Shetty, are perverse and contrary to law and, therefore, Leave to Appeal ought to be granted to the State.

6. On the other hand, Mr. N. N. Sardessai, learned Counsel on behalf of the Accused/Respondent has submitted that the case at hand was a case where two views were reasonably possible, one view which was sought to be put forward through the evidence of the said three witnesses examined on behalf of the prosecution and the other which was put forward through the evidence of D.W.1, Estelina Coelho, who was

admittedly present as a pillion rider along with the Accused and D.W.2, Filomena D'Cunha, who was also present at the place where the accident took place and the learned Judicial Magistrate, First Class has chosen not to accept the versions given by the said three witnesses in preference to the versions given by the said defence witnesses and has acquitted the Accused and being so, the State does not deserve to be granted Leave to Appeal.

7. Mr. S. N. Sardessai, learned Public Prosecutor in support of his case has placed reliance on the case of **State of Kerala** v. **Chellappan Sanal Kumar**(1981 (Supp) SCC 15) and the case of **Kashiram and others** v. **State of M.P.**((2002) 1 SCC 71).

8. The case of **State of Kerala** v. **Chellappan Sanal Kumar**(supra) was a case where the Accused was acquitted by the Sessions Judge and an application having been filed for Leave to Appeal the same was rejected by the Order of the High Court dated 10th January, 1975. The said Order of the High Court dated 10th January, 1975, came to be upheld by the Hon'ble Supreme Court.

9. In the case of **Kashiram and others** v. **State of M.P.**(supra) the Hon'ble Supreme Court has observed

that the High Court while dealing an Appeal against acquittal has powers as wide and comprehensive as in an appeal against a conviction and while exercising its appellate jurisdiction the High Court can reappraise the evidence, arrive at findings at variance with those recorded by the trial Court in its order of acquittal and arrive at its own findings, yet, the salutary principle which would guide the High Court is – if two views are reasonably possible, one supporting the acquittal and the other recording a conviction, the High Court would not interfere merely because it feels that sitting as a trial Court its view would have been one of recording a conviction. The Hon'ble Supreme Court also stated that it was obligatory on the High Court while reversing an order of acquittal to consider and discuss each of the reasons given by the Trial Court to acquit the Accused and then to dislodge those reasons and failure to discharge this obligation constitutes a serious infirmity in the Judgment of the High Court.

10. The same principle is found reiterated earlier in the case of **The State of U.P.** v. **Samman Dass**(AIR 1972 SCC 677) wherein the Hon'ble Supreme Court observed that "there are, however, certain cardinal rules which have always to be kept in view in appeals against acquittal. Firstly, there is a

presumption of innocence in favour of the accused which has to be kept in mind, especially when the accused has been acquitted by the court below; secondly, if two views of the matter are possible, a view favourable to the accused should be taken; thirdly, in case of acquittal by the trial Judge, the appellate Court should take into account the fact that the trial Judge had the advantage of looking at the demeanour of witnesses and fourthly, the accused is entitled to the benefit of reasonable doubt. The doubt should, however, be reasonable and as observed recently by this Court, the doubt should be such which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy - though unwittingly it may be - or is afraid of the logical consequences, if that benefit was not given".

11. As said before, the case at hand is a case where the learned Judicial Magistrate, First Class in terms has disbelieved the versions given by the said three witnesses examined by the prosecution namely P.W.5, Datta Guru Aroskar, P.W.7, Datta Govekar and P.W.8, Uday B. Shetty, though, the learned Judicial Magistrate, First Class might have not said so in so many words. The learned Judicial Magistrate, First Class has preferred to accept the versions given by the

defence witnesses, though it could be said that the evidence of D.W.2, Filomena D'Cunha, was not very different, as far as the improbabilities of the facts stated by her were concerned from the evidence of the said three prosecution witnesses. D.W.2, Filomena D'Cunha, in fact has stated that she had not seen from which direction the maruti van came but she had maintained that the said woman dashed against her. In case, she did not know in which direction the maruti van came, it is but obvious that she had not seen the impact taking place and might have only seen the said woman fallen in front of the said maruti van.

12. The evidence of the said three prosecution witnesses was an open exhibition of contradiction and inconsistencies which the learned Judicial Magistrate, First Class has rightly noted. Although, the Accused had alleged that it is the said maruti van which was driven by P.W.7, Datta Govekar, which was involved in the accident and two of the witnesses had stated that the said maruti van was taken at the Police Station, none had explained as to why the said maruti van was taken to the Police Station in case it was not involved in the accident. The learned Judicial Magistrate, First Class had also rightly noted that in case the Accused had come with his said scooter in a little speed, as stated by P.W.5, Datta Guru Aroskar, or in a fast speed

as stated by P.W.7, Datta Govekar and P.W.8, Uday B. Shetty, it would have been improbable for the Accused to run away with the same scooter from the scene of offence without falling off from the scooter. The learned Judicial Magistrate, First Class had rightly noted that disparity between the scene of offence as depicted in the panchanama and the sketch and as narrated by the said witnesses.

13. Moreover, P.W.5, Datta Guru Aroskar, had stated that he was along with his friends after purchasing a newspaper. P.W.5, Datta Guru Aroskar, had further stated that he was with his friend who was none other than the said P.W.8, Uday B. Shetty, but P.W.8, Uday B. Shetty, in turn did not support P.W.5, Datta Guru Aroskar, in that regard as P.W.8, Uday B. Shetty, stated that he was coming on his own Bajaj scooter behind the scooter allegedly driven by the Accused. P.W.5, Datta Guru Aroskar, in his first version gave an impression that the said maruti van, driven by P.W.7, Datta Govekar, came after the impact and in that maruti van, the injured was taken to Asilo Hospital but later on, he changed his version and stated that the Accused was overtaking the said maruti van. In fact, P.W.7, Datta Govekar, gave a version which was not supported either by P.W.5, Datta Guru Aroskar and P.W.8, Uday B. Shetty. The version of P.W.7, Datta Govekar, was that

when he had reached near Urban Bank with his said maruti van. a scooter along with a pillion rider came in a fast speed, overtook his van and dashed against the said pedestrian lady who was crossing the road due to which the pedestrian lady fell down on the road but the said scooter did not stop but proceeded further at a distance of about 10 meters and then stopped. If P.W.5, Datta Guru Aroskar and the Accused stated that the said pedestrian lady was coming from the market side South-North direction) P.W.7, Datta Govekar, stated the contrary, stating that the said woman was going to the market i.e. to say from his right hand side to the left hand side. He also admitted that the said woman had fallen in front of his vehicle at a distance of about 5 meters. It is rather strange to note that P.W.7, Datta Govekar, if at all he was driving the said maruti van, did not know to whom the said maruti van belonged. He admitted that his vehicle was taken to the Police Station but he had not informed the Police about the accident and as already stated gave no explanation whatsoever in case his vehicle was not involved in the accident why at all it was taken to the Police Station. According to him, the accident took place at the junction where four roads meet. P.W.8, Uday B. Shetty, gave yet another dimension to the story by stating that it is he who had stopped the maruti van which was coming along that way to take the

injured to the doctor and it is rather strange to note that though P.W.8, Uday B. Shetty, stated the number of the scooter of the Accused as GDN 1733 he could not tell the number of the said maruti van. According to him, he was coming on his own scooter and was at a distance of 1 1/2 meters behind the said maruti van.

14. In my opinion, the case at hand cannot be termed to be a case where appreciation of prosecution evidence by the learned Judicial Magistrate, First Class has been perverse. Considering the contradictions and inconsistencies in the case of the prosecution and particularly in the evidence of the three prosecution witnesses P.W.5, Datta Guru Aroskar, P.W.7, Datta Govekar and P.W.8, Uday B. Shetty, the learned Judicial Magistrate, First Class has chosen to give benefit of doubt to the Accused regarding his involvement in the said accident which took place causing the death of the said pedestrian lady. Being so, this is a case where two views were reasonably possible and this Court is not entitled to replace its own view with that of the learned Judicial Magistrate, First Class. In case, the learned Judicial Magistrate, First Class chose to give benefit of doubt to the accused regarding his involvement in the accident, there was no question of the Accused being held guilty for any of the offences under the Motor Vehicles Act,

1988 alleged against him. In my opinion, this is a fit case to reject the application for leave. Hence, I hereby reject the same.

N. A. BRITTO, J.

RD.